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Division Bench

IN THE HIGH COURT OF JUDICATURE, AT BILASPUR

MISC. APPEAL NO 216 /2006
(C)

APPELLANT

Mahendra Kumar Sahu
S/o Ayodhya Prasad Sahu
Aged about 31 years,
R/o Village- Bhothli
Teh. & Distt. Dhamtari (C.G.)

VERSUS

RESPONDENTS

1. Dumanlal Sahu
S/o Sobharam Sahu @
Sabharam Sahu
R/o Rakhi Teh.- Kurud,
Distt. Dhamtari
2. Narayan Singh S/o
Ramratan Dhurendra R/o
Sanjay Nagar Kurud, Teh.
Kurud, Distt. Dhamtari
(C.G.)
3. The Oriental Insurance Co.
Ltd. Behind Amar Talkies
(C.G.)

P.N. No. 216/2006
Presented by Smt. Mahendra Sahu
dated 19/06/06

MISCELLANEOUS APPEAL UNDER SECTION 173 OF
THE MOTOR VEHICLE ACT



(26)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 216 of 2006

1. Mahendra Kumar Sahu, S/o Ayodhya Prasad Sahu, aged about 31 years, R/o village Bhothli, Teh. & Distt. Dhamtari (CG)

---- Appellant

Versus

1. Duman Lal Sahu, S/o Sobharam Sahu @ Sabharam Sahu, R/o Rakhi, Teh.- Kurud, Distt. Dhamtari.
2. Narayan Singh, S/o Ramratan Dhurendra, R/o Sanjay Nagar, Kurud, Teh. Kurud, Distt. Dhamtari (CG)
3. The Oriental Insurance Co. Ltd., Behind Amar Talkies (CG)

---- Respondents

For Appellant:

Shri V. Bajpai & Shri Q. Aziz, Advocates

For Respondent No.1 & 2:

None.

For Respondent No.3:

Shri Sudhir Agrawal, Advocate.

Judgment

14/08/2016

1. This appeal filed by the claimant/appellant arises out of the award dated 25.7.2006 passed by the Additional Motor Accident Claims Tribunal, Raipur (henceforth 'the Claims Tribunal') in Claim Case No.506/04 whereby in an injury case compensation of Rs.90,000/- has been awarded to the claimant/appellant herein.
2. Facts of the case, in brief, are that on 25.3.2004 when the claimant/appellant was riding his motorcycle with his friend Tukaram Kumar, it was dashed by the vehicle i.e. Jeep bearing registration number CG04-ZA-2385, which was being driven in a rash & negligent manner by respondent No.1 herein, as a result of which the claimant suffered number



(27)

of injuries on various parts of the body. In the said accident Tukaram Kumar, pillion rider, had also sustained number of injuries. At the time of accident the offending vehicle was owned by respondent No.2 & insured with respondent No.3.

3. A claim case was filed by the injured claimant/appellant claiming compensation to the tune of Rs.12,55,000/- under various heads, *inter alia*, pleading that after the accident, he was taken to the Government Hospital, Kurud from where he was shifted to Masihi Hospital, Dhamtari and thereafter to Dr. Khemka's Hospital, Raipur where a rod was inserted in his leg. It has been further pleaded that at the time of incident, he was earning Rs.125/- per day, however, on account of injuries caused in the accident, he could not perform his work for months' together. It has been also pleaded that in the said accident the claimant has suffered permanent disability to the extent of 40%.
4. Respondents No.1 & 2 i.e. driver & owner of offending vehicle, filed their written statement denying the averments made in the claim application. They have taken a defence that it is the claimant who was responsible for the accident as he was riding the motorcycle in a negligent manner. He has not suffered any permanent disability or loss of income.
5. Respondent No.3-Insurance Company contested the claim case and denied its liability on the ground that the accident occurred due to rash and negligent driving of the appellant himself and there was breach of insurance policy also as the driver of offending vehicle was not having valid & effective driving license.
6. The Claims Tribunal by the impugned award has awarded a compensation



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of Rs.90,000/- to the appellant under various heads such as pain & suffering, transportation expenses, special diet and expenses incurred in the treatment. It is this award which has been challenged by the appellant in this appeal.

7. Counsel for the appellant submits that;-

- the Claims Tribunal has erred in law in awarding very negligible compensation for the injuries sustained by the claimant.
- under conventional head a lump sum amount of Rs.10,000/- has been awarded which is not in accordance with law and the same is required to be enhanced suitably.
- the Claims Tribunal has not considered the important aspect of the case that in future also the appellant had to undergo surgery for removing the rod inserted in his leg.

8. On the other hand, it has been argued on behalf of the counsel for respondent No.3 that the compensation awarded by the Claims Tribunal is already on the higher side and as such, the same is not required to be enhanced at all.

9. Heard counsel for the parties and perused the material available on record.

10. Considering the fact that the claimant/appellant remained hospitalized for more than 30 days in different hospitals and during this period a rod was inserted in his leg and further considering that in future also he would be required to undergo surgery for removal of said rod, it is apparent that the claimant would have suffered much pain and agony and would also be required to incur expenses in future treatment. Thus, keeping in view all these things, this Court is of the view that the amount awarded by the

Claims Tribunal is on lower side and requires reconsideration. The claimant/appellant is entitled for compensation in the following manner;-

Heads		Amount Awarded
For Medical Expenses	:	Rs.60,000/- (Maintained)
For loss of income during treatment	:	Rs.20,000/- (Maintained)
For Pain & Suffering	:	Rs.35,000/-
For Transportation	:	Rs.10,000/-
For future treatment	:	Rs.5,000/-
For Special Diet	:	Rs.20,000/-
For Attendant	:	Rs.10,000/-
Total		Rs.1,60,000/-

11. On the basis of aforesaid discussions, the claimant/appellant is held entitled for a total compensation of Rs.1,60,000/- and since the Claims Tribunal has already awarded Rs.90,000/-, after the deducting the same the claimant/appellant is entitled for enhanced amount of Rs.70,000/-. This additional amount of compensation shall carry interest @-6% p.a. from the date of filing of claim application till realization.
12. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated above.

Sd/-
Pritinker Diwaker
Judge